THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22238 OF 2006

DATED 27th OCTOBER, 2006

BETWEEN

Sri Dubba Ramudu and another

… Petitioners

and

The A.P.State Wakf Board, rep.by its Chief Executive Officer, Haj House Complex, Opp.to Public Gardens Road, Nampally, Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22238 OF 2006

ORDER:

The petitioners filed the present writ petition challenging the proceedings of the first respondent, dated 29.09.2006, permitting the Muthawalli (Trustee) of Ashoorkhana Hazrath Abbas, Palkur village, Banaganapalli Mandal of Kurnool District (hereafter called, the wakf) to lease out wakf's land for mining purpose in favour of the fourth respondent.

The fact of the matter is not much in dispute. The first petitioner was granted a mining lease by the third respondent for Limestone Slabs (Black) over an extent of 0.720 hectares in survey No.288/1 of Palkur village. The lease was granted on 07.01.2004 for a period of ten years. Likewise, the second petitioner was granted lease on 09.03.2002 in respect of 0.917 hectares in survey No.213 of Palkur village, Banaganapalli Mandal for a period of ten years. The fourth respondent, who is Muthawalli of the wakf and three others filed a writ petition being W.P.No.4813 of 2005 challenging the grant of lease in favour of the petitioners *inter alia* on the ground that without the consent from the first respondent or the wakf, the grant of lease is illegal. The writ petition was disposed of by this Court on 03.08.2005 with certain observations. Failing to get relief, the fourth respondent and three others filed Letters Patent Appeal being W.A.No.1535 of 2005. This Court while giving liberty to the first respondent to take appropriate legal proceedings for nullification of the two sale deeds executed by Abdul Rasool, the grandfather of the fourth respondent and former Muthawalli in favour of Yellappa and Ramudu, dismissed the writ appeal as withdrawn. The first respondent then issued notice, dated 17.03.2006 under Section 51 of Wakf Act, 1995. The petitioners submitted reply/explanation. The petitioners allege that first respondent did not pass any order under Section 51 of the Act but they received land proceedings, dated 20.06.2006 issued by the District Collector pursuant to requisition made under Section 52(1) of the Wakf Act by the first respondent. In the said proceedings, the petitioners were directed to deliver possession of the wakf property to

Inspector/Auditor, Wakf, Kurnool. Assailing the same, the petitioners filed W.P.No.15266 of 2006 but the same was dismissed as withdrawn by this Court on 25.09.2006. The petitioners swear that they withdrew W.P.No.15266 of 2006 as they were assured with continuance of quarry lease. Be that as it is, the third respondent passed orders on 27.07.2006 cancelling quarry lease granted to the petitioners on the ground that Mandal Revenue Officer has withdrawn 'No Objection Certificate' (NOC) for grant of mining lease. The petitioners then approached the second respondent by way of Appeal, which was statedly heard on 07.10.2006 and orders were reserved. At that stage, having come to know that the first respondent has permitted the fourth respondent to enter into a lease on non-judicial stamp paper in respect of wakf land in survey Nos.288/1, 288/3 and 293 admeasuring Acs.5.84 cents for the purpose of quarry lease for Limestone Slabs, the petitioners filed the present writ petition.

Learned counsel for the petitioners submits that the Appeal field by the petitioners against cancellation of lease by the third respondent was heard by the second respondent on 07.10.2006 and as per the information received by the petitioners, the second respondent allowed the Appeal. Therefore, the learned counsel submits that when the lease is subsisting in respect of the same property, the first respondent cannot grant any permission to the fourth respondent to enter into lease with third parties in relation to the same land. Secondly, she would urge that it is not competent for the first respondent to grant lease under A.P.Minor Mineral Concession Rules, 1966 (the Rules, for brevity) and such power is given only to the third respondent. Lastly, she submits that though enquiry was initiated by the first respondent under Section 51 of the Wakf Act, no enquiry was conducted and no order was passed for verification of the petitioners from the wakf land.

It is not disputed that the lease granted in favour of the petitioners by the third respondent is no more existence. The lease has been terminated. Unless and until the same is set aside by appellate authority, the petitioners have no *locus standi* if the wakf land is permitted to be leased out to a third party for quarry lease. Though, across the bar, it is submitted that the first respondent has allowed the appeal, this Court is not inclined to give any importance to such unsubstantiated submissions of the petitioners. Secondly, by impugned order, the first respondent permitted the fourth respondent for mining the lands attached to the wakf in survey Nos.288/1, 289/3 and 293 to an extent of Acs.5.84 cents. As disclosed in paragraphs 2 and 3 of the affidavit, the first petitioner was granted mining lease in respect of 0.720 hectates in survey No.288/1 and second petitioner was granted lease in respect of 213 of Palmur. It is very much doubtful

whether second petitioner can challenge the action of the first respondent especially when he was admittedly granted lease only in respect of land in survey No.213, which does not find mentioned in impugned order. This Court, however, hastens to add that this itself does not make any difference as the petitioners' lease has already been transferred. Thirdly, under the legal dispensation, when the private land is used for mining purpose, the consent of the owner has to be obtained before the competent authority under the Rules considers grant of mining lease. In this case, the first respondent only permitted the fourth respondent to execute lease agreement in favour of third parties for mining in the lands of the wakf. The impugned proceeding does not amount to grant of lease under the Rules. The submission of the learned counsel for the petitioners that the first respondent is not competent to permit the fourth respondent to enter into a lease agreement for the purpose of mining is misconceived. Permission granted by the first respondent has to be construed as according permission to fourth respondent to give consent for such mining lease. Fourthly, a perusal of the proceedings of the District Collector (who is not a party to this writ petition), Ex.P.3 would show that after conducting enquiry under Section 51 of the Wakf Act, the Chief Executive Officer has sent a requisition under Section 52(1) of the Wakf Act, pursuant to which, the petitioners were directed to handover possession of wakf property to the Inspector/Auditor of the wakf. Challenging the same, the petitioners filed W.P.No.15266 of 2006 and without taking leave to agitate afresh, the petitioners withdrew the same for reasons best known to them. Therefore, as on toady, there are valid proceedings for eviction of the petitioners taken under Section 51 and 52 of the Wakf Act. In the absence of any challenge to the proceedings of the District Collector, it is very much doubtful whether the petitioners can question the proceedings of the first respondent. The averment made in paragraph 8 of the affidavit and the submission made by the learned counsel for the petitioners that on an assurance that their lease will be continued, they withdrew W.P.No.15266 of 2006, is one which cannot be countenanced. The allegation is vague and bereft of any details. Even if such assurance is there, the petitioners have to approach the State Wakf Tribunal under Section 83(2) of the Wakf Act and the writ petition is misconceived.

The writ petition, for the above reasons, is dismissed. No costs.

(V.V.S.RAO,J)

27.10.2006.

pln